

CANCELLATION OF TRUST PATENTS IN CERTAIN CASES.

JUNE 17, 1910.—Ordered to be printed.

Mr. BROWN, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H. R. 18013.]

The Committee on Indian Affairs, to which was referred the bill (H. R. 18013) to authorize the cancellation of trust patents in certain cases, having had the same under consideration, recommend that it be amended, and, when amended, that it do pass.

Strike out the period at the end of line 10 and insert the words, "and to reinstate cash entry number sixty-five hundred and ninety-five."

The bill in its original form authorized the Secretary of the Interior to cancel two allotments alleged to have been illegally made to two Indians in Wisconsin, as set forth in the letter of the Secretary of the Interior to the chairman of the Committee on Indian Affairs of the House of Representatives, which is attached to and made a part of this report. The allotments were undoubtedly illegal and should be canceled. There is no authority of law by which the Secretary of the Interior may make these cancellations.

It appears that after the lands were allotted one Alvin A. Muck was permitted to make a cash entry for the land. This was subsequently held to have been erroneously made and was canceled.

In the first report made by the Secretary of the Interior upon the bill, it is stated that there does not appear to be any reason why the cash entry of Muck should be reinstated; but subsequently, under date of April 8, 1910, the Secretary addressed a communication to the Committee on Indian Affairs of the House of Representatives, in which he more fully discusses the entry made by said Muck, and states:

I know of no reason why, if Congress deems it wise to do so, the entry should not be reinstated after the allotments have been canceled by this department under specific authority of Congress.

For the reasons set forth in the communications of the Secretary of the Interior, the Senate Committee on Indian Affairs has recommended that the bill be amended so as to permit the reinstatement of the cash entry.

The reports of the Secretary of the Interior upon this bill are as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 14, 1910.

SIR: I have the honor to acknowledge receipt of your letter of March 2, 1910, inclosing, for consideration and report, a copy of H. R. 18013, Sixty-first Congress, second session, authorizing the cancellation of the trust patents issued on Ashland, Wis., Indian allotment application No. 44 of Mary Louisa Rolfe, for the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 21, and No. 45, of Louisa Phelix, for the N. $\frac{1}{2}$ SW. $\frac{1}{4}$ sec. 21, both in T. 47 N., R. 10 W., and authorizing the reinstatement of Alvin A. Muck's cash entry No. 6595 for this land and the issuance of a patent thereon in the names of S. G. Hudson and L. G. Graham.

You call attention to the fact that it appears from former correspondence of the General Land Office and of the Indian Office regarding the illegality of these allotments that the evidence of the waiver of any claim to the lands in question by the Indians was mere hearsay, and you suggest that before the authority for the cancellation of the trust patents be granted it be shown affirmatively that the allottees make no claim to the land and are of legal age, sound mind, and competent to act for themselves.

On May 21, 1902, a hearing was had at the local land office at Ashland, Wis., as the result of charges filed by Alvin A. Muck on October 18, 1900, that the allotments were illegal for the following reasons: That the allottees never resided on or improved the lands; that the lands were covered with a dense growth of timber; that the allottees, Louisa Phelix and Mary Louisa Rolfe, were the wife and daughter, respectively, of a white man and of one-eighth and one-sixteenth Indian blood only; and that the lands were sold and transferred immediately after the allotment applications were filed.

Subsequent to the decision of the General Land Office of January 24, 1903, holding the allotments for cancellation on the ground of illegality, the department held, March 14, 1905 (unreported), and May 3, 1907 (35 L. D., 549), that the quantum of Indian blood does not determine the right of an Indian to allotment. It is believed, however, that the illegality of the allotments is established on the ground that the allottees had not settled on or occupied the lands allotted to them. The fourth section of the act of February 8, 1887 (24 Stat. L., 388), provides that certain Indians who have settled on public lands may have such lands allotted to them. The allottees at the hearing, heretofore referred to, admitted that they had never settled on the lands and had seen them for the first time just prior to the hearing.

While a child or wife of an Indian is not required to settle on public lands in order to receive an allotment thereof, where the head of the family has so settled, this holding would not apply to these allottees, as Mrs. Rolfe, the head of the family in the contemplation of the allotment laws, did not so reside on the land, and Mr. Rolfe, a white man, did not and could not settle on the public lands under the meaning of the act so that these allottees (his wife and child) could become entitled to lands on the public domain by virtue of his settlement.

On June 3, 1903, the local land office at Ashland forwarded to the General Land Office evidence of service on the attorneys for the allottees of the decision holding the allotments for cancellation, and evidence that the right of appeal therefrom had been waived, and on February 25, 1905, F. P. Rolfe, husband and father of the allottees, informed the superintendent of the La Pointe Indian School, in writing, a copy of his letter being on file in the Indian Office, that as their children were of an age that they desired to give them an education and the land was too far from schools for them to attend, and he expected to move to Idaho in the near future, they did not desire to make any further claim to the lands.

In view of the facts set forth it is believed that the allotments were illegal and desired only for the purpose of selling the timber on the allotted lands, and as the timber has since been removed the lands would be worthless to the Indians, and that the allotments should be canceled. But your attention is called to the fact that notwithstanding this department has held that these allotments should be canceled, it has no authority to do so under the act of April 23, 1904 (33 Stats., 297), until express authority has been given for that purpose by Congress.

Turning now to the provision of the bill which proposes to authorize the reinstatement of the entry mentioned and the patenting of the lands to S. G. Hudson and L. G. Graham, your attention is further called to the fact that the action of this department affecting the allotments was the result of a contest against them by Alvin A. Muck. His entry was, however, erroneously allowed, because the lands could not become subject to entry until the allotment patents had been canceled. He was, through a misinterpretation of the instructions to the register and receiver, permitted

to make entry and, having made final proof, was erroneously permitted to make the payment under which he received a final certificate entitling him to patent. His entry was not canceled because of any disqualification or fraud on his part, but solely because it was erroneously allowed prior to the cancellation of the allotment patents.

Muck claims that very soon after making his final proof and payment and receiving certificate, he paid the sum of \$2,500 to Weyerhaeuser & Rutledge for a release of their claim through a purchase from the Indian allottees, and the additional sum of \$500 to the allottees for a release of their claims, and that he subsequently disposed of the timber on the lands for the sum of \$13,500 or \$14,000.

A suit by the Government is now pending against persons who cut timber under Muck's sale for \$5,683.54, and a further suit against them for \$4,989.60 has been recommended to the Department of Justice. It appears that practically all of the timber, which constituted the greater value of the lands, has been cut and taken away, and attention is called to the question as to whether the passage of this bill would relieve the defendants in these suits.

This department has no knowledge of the connection of either S. G. Hudson or L. G. Graham with these lands and knows of no reason why patents should issue to them; and, for that reason, can not recommend that patents so issue, although it is clear that this department should be vested with the authority to cancel the patents to the allottees.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. CHARLES H. BURKE,

*Chairman Committee on Indian Affairs,
House of Representatives.*

APRIL 8, 1910.

SIR: I am in receipt of your request for a further report on H. R. 18013, which, as amended by your committee, proposes to authorize the cancellation of allotments made to Louisa Phelix and Mary Lorena Rolfe. This bill as originally introduced proposed to issue patents for the lands involved in these allotments to S. G. Hudson and L. G. Graham, and in my report of March 14, 1910, upon that bill I declined to recommend the issuance of patents to Hudson and Graham for the reason that this department had no knowledge of their connection with the land.

As was stated in that report, the allotments mentioned were held for cancellation under a contest proceeding initiated and prosecuted by one Alvin A. Muck, who was erroneously permitted to make a timber and stone entry for the lands involved. His entry was canceled because of its having been erroneously allowed and not because of any fraud on his part or other irregularity affecting the entry. The entry would have passed to patent had it not been for its having been prematurely allowed.

I know of no reason why, if Congress deems it wise to do so, the entry should not be reinstated after the allotments have been canceled by this department under specific authority given by Congress.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. CHARLES H. BURKE,

Chairman Committee on Indian Affairs, House of Representatives.



